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09/822,136

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EXAMINER

PRONE, JASON D

ART UNIT

PAPER NUMBER

3724

MAIL DATE

DELIVERY MODE

09/13/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/822,136

Applicant(s)

KOZYRSKI ET AL.

Examiner

Jason Prone

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33 and 35-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33 and 35-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Upon further review the previous Office applied a new 103 rejection (Lindley in view of Richter), which was not necessitated by the amendment submitted. Therefore, the previous Office action should not have been made final.

Claim Objections

1. Claim 36 is objected to because of the following informalities: Applicant should note that the limitation "means having a hand grip portion and an axle on which the cutting blade is pivotally mounted" is not in compliance with the Supplemental Guidelines published in the Official Gazette on July 25, 2000. Such limitations cannot be used to invoke 35 USC 112, 6th paragraph, and have therefore been given their broadest reasonable interpretation, without considering equivalence. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 33 and 35-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Richter (5,758,426).

In regards to claims 33 and 35, Richter discloses the same invention including a rotary cutter (11 and Column 4 lines 24-26) comprising a circular cutting blade (21) having an axis, a diameter, a maximum thickness extending between first and second

Art Unit: 3724

lateral sides (Fig. 4), a cutting edge (33) defined by first and second edge surfaces (35), the first edge surface extends between the first lateral side and the second edge surface and the second edge surface extends between the second lateral side and the first edge surface (35), the first and second edge surfaces are symmetrical about the cutting edge (Fig. 4), the cutting edge includes an edge angle defined by the first and second edge surfaces that is not less than 40° and not greater than 50° (Column 4 line 1), the diameter of the cutting blade is not greater than fifteen times the maximum thickness (Column 4, lines 16-18), a handle having a grip portion (15) and an axle on which the cutting blade is pivotally mounted (19), the cutting blade and the manner which it is mounted on the handle permits the cutter to travel a multi-directional path (Fig. 3), and the handle is operable to permit the cutting blade to travel in a directionally unrestricted path (Fig. 3).

In regards to claims 36 and 37, Richter discloses a means having a hand grip portion (15) and an axle on which the cutting blade is pivotally mounted (19), the means is operable to permit the cutting blade to travel in a directionally unrestricted path (Fig. 1), the means comprises a handle with the hand grip portion (15).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3724

5. Claims 33 and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mathein (704,352) in view of Richter with evidence patent Lindley. In regards to claims 33 and 35, Mathein discloses the invention including a rotary cutter (Fig. 1) comprising a circular cutting blade (L) having an axis, a diameter, a maximum thickness extending between first and second lateral sides (Figs. 2 and 3), a cutting edge defined by first and second edge surfaces (L), the first edge surface extends between the first lateral side and the second edge surface and the second edge surface extends between the second lateral side and the first edge surface (Fig. 3), the first and second edge surfaces are symmetrical about the cutting edge (Fig. 3), a handle having a grip portion (A) and an axel on which the cutting blade is pivotally mounted (I), the cutting blade and the manner which it is mounted on the handle permits the cutter to travel a multi-directional path (Fig. 1), and the handle is operable to permit the cutting blade to travel is a directionally unrestricted path (Fig. 1).

Even though Mathein appears to incorporate a 45° cutting angle, Mathein is silent with respect to the dimensions of the cutting wheel and therefore fails to disclose the cutting edge includes an edge angle defined by the first and second edge surfaces that is not less than 40° and not greater than 50° and the diameter of the cutting blade is not greater than fifteen times the maximum thickness.

Lindley provides evidence that rotary cutting blade are used in the cutting of sheet metal (Column 1 lines 7-9)

In light of Lindley, Richter teaches it is old and well known for rotary cutters to incorporate an edge angle defined by the first and second edge surfaces that is not less

Art Unit: 3724

than 40° and not greater than 50° (Column 4 line 1) and the diameter of the cutting blade is not greater than fifteen times the maximum thickness (Column 4 lines 16-18). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention, to have provided Mathein with a cutting wheel with a specific angled cutting edge and thickness, as taught by Richter, to allow for specific sized blade providing predictable results.

Response to Arguments

6. Applicant's arguments filed 30 August 2007 have been fully considered but they are not persuasive. With respect to the Richter rejection, portion 15 is perfectly capable of acting as a handle. A user could grip portion 15. The travel path of the blades would be an unrestricted circle. The circle path is made up of infinite directions. Also, the side edge of item 21 is considered a lateral side of the blade and as claimed the first edge portion does extend between the first lateral side and the second edge surface. For an item to extend between two things, the item need not touch either of the two things only extend in an area between the two things.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Prone whose telephone number is (571) 272-4513. The examiner can normally be reached on 8:00-5:30, Mon - (every other) Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer D. Ashley can be reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3724

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

September 10, 2007



Patent Examiner

Jason Prone

Art Unit 3724

T.C. 3700